

SECOND REGULAR SESSION

HOUSE BILL NO. 1578

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KOLKMEYER.

5259H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 507.040, 507.050, 508.010, 508.012, and 537.762, RSMo, and to enact in lieu thereof five new sections relating to civil procedure in tort claims.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 507.040, 507.050, 508.010, 508.012, and 537.762, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 507.040, 507.050,
3 508.010, 508.012, and 537.762, to read as follows:

507.040. 1. All persons may join in one action as plaintiffs if they assert any right to
2 relief jointly, severally, or in the alternative in respect of or arising out of the same transaction,
3 occurrence, or series of transactions or occurrences and if any question of law or fact common
4 to all of them will arise in the action. All persons may be joined in one action as defendants if
5 there is asserted against them jointly, severally, or in the alternative, any right to relief in respect
6 of or arising out of the same transaction, occurrence, or series of transactions or occurrences and
7 if any question of law or fact common to all of them will arise in the action. **Notwithstanding**
8 **any other provision of law to the contrary, for any action in which a plaintiff was injured**
9 **outside the state of Missouri, claims arising out of separate purchases of the same product**
10 **or service, or separate incidents involving the same product or service shall not satisfy this**
11 **section.** A plaintiff or defendant need not be interested in obtaining or defending against all the
12 relief demanded. Judgment may be given for one or more of the plaintiffs according to their
13 respective rights to relief, and against one or more defendants according to their respective
14 liabilities.

15 2. **In addition to the requirements of subsection 1 of this section, in any civil action**
16 **in which there is a count alleging a tort, two or more plaintiffs may be joined in a single**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **action only if each plaintiff could have separately filed an action in that venue,**
18 **independently of the claims of any other plaintiff. Two or more defendants may be joined**
19 **in a single action only if:**

20 **(1) Personal jurisdiction is proper for each defendant, independent of the claims**
21 **against any other defendant; and**

22 **(2) Each plaintiff can establish proper venue against each defendant, independently**
23 **of the claims against any other defendant.**

24 **3. All parties for which proper personal jurisdiction and venue cannot be**
25 **independently established shall be deemed misjoined. Misjoined parties may be joined**
26 **only where at least one claim is properly pending in the court and all parties to the action**
27 **waive objection to the misjoinder. All other misjoined parties shall be subject to the**
28 **provisions of section 507.050. The requirements under this section are procedural.**

29 **4. Notwithstanding any other provision of law to the contrary, if two or more**
30 **plaintiffs were first injured outside of the state of Missouri as a result of a single**
31 **occurrence in which injuries occurred simultaneously, such as with an automobile collision**
32 **or industrial explosion, the plaintiffs may be joined in one action in Cole County.**

33 **5. The court may make such orders as will prevent a party from being embarrassed,**
34 **delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who**
35 **asserts no claim against him, and may order separate trials or make other orders to prevent delay**
36 **or prejudice.**

507.050. 1. Misjoinder of parties is not ground for dismissal of an action. Parties may
2 be dropped ~~or~~ , added, **or severed** by order of the court on motion of any party or of its own
3 initiative at any stage of the action and on such terms as are just. Any claim against a party may
4 be severed and proceeded with separately. **If a plaintiff or defendant is deemed misjoined**
5 **under subsection 3 of section 507.040, all claims brought by that plaintiff or against that**
6 **defendant shall be severed from the action and those claims shall be transferred to a county**
7 **in which venue exists upon the motion of any party. If there is no county in Missouri in**
8 **which venue exists, those claims shall be dismissed without prejudice.**

9 2. A motion to drop or add parties may be made at the same time as other motions
10 provided for in section 509.290, and if so made, the provisions of section 509.340 with reference
11 to the consolidation of motions and waiver of objections shall also apply. If said motion is made
12 at any other time, the hearing and determination thereof shall not delay the trial. Objections on
13 account of misjoinder or nonjoinder of parties may also be raised by answer or reply.

508.010. 1. As used in this section, "principal place of residence" shall mean the county
2 which is the main place where an individual resides in the state of Missouri. ~~[There shall be a~~

3 ~~rebuttable presumption that the county of voter registration at the time of injury is the principal~~
4 ~~place of residence.]~~ There shall be only one principal place of residence.

5 **(1) For an individual person, there shall be a rebuttable presumption that the**
6 **county of voter registration at the time of injury is the principal place of residence.**

7 **(2) For an individual whose conduct at issue was alleged to be in the course and**
8 **scope of his or her employment with a corporation, the individual's principal place of**
9 **residence is the applicable corporation's principal place of residence.**

10 **(3) For a corporation, the county where the corporation has its registered agent is**
11 **the principal place of residence.**

12 **(4) For a domestic insurance corporation, the county where the corporation has its**
13 **registered office is the principal place of residence.**

14 **(5) For a foreign insurance corporation, the county where the foreign corporation**
15 **has its registered office is its principal place of residence; if such a foreign corporation does**
16 **not have a registered office in any county in Missouri, the principal place of residence shall**
17 **be Cole County.**

18 2. In all actions in which there is no count alleging a tort, venue shall be determined as
19 follows:

20 (1) When the defendant is a resident of the state, either in the county within which the
21 defendant resides, or in the county within which the plaintiff resides, and the defendant may be
22 found;

23 (2) When there are several defendants, and they reside in different counties, the suit may
24 be brought in any such county;

25 (3) When there are several defendants, some residents and others nonresidents of the
26 state, suit may be brought in any county in this state in which any defendant resides;

27 (4) When all the defendants are nonresidents of the state, suit may be brought in any
28 county in this state, **provided there is personal jurisdiction over each defendant,**
29 **independent of each other defendant.**

30 3. The term "tort" shall include claims based upon improper health care, under the
31 provisions of chapter 538.

32 4. Notwithstanding any other provision of ~~law~~ **this section to the contrary**, in all
33 actions in which there is any count alleging a tort **or alleging damages for benefits due under**
34 **an insurance contract based on any insured's bodily injury, personal injury, wrongful**
35 **death, or property damage**, and in which the plaintiff **or insured** was first injured **or the**
36 **property damaged** in the state of Missouri, venue shall be in the county where the plaintiff **or**
37 **the plaintiff's decedent** was first injured **or the property damaged** by the ~~wrongful~~ acts or
38 ~~negligent~~ conduct alleged in the action. **For purposes of any action alleging a tort arising**

39 **from an insurance contract, the plaintiff is deemed first injured in the county where he or**
40 **she resided at the time of the alleged economic damage.**

41 5. Notwithstanding any other provision of law, in all actions in which there is any count
42 alleging a tort and in which the plaintiff was first injured outside the state of Missouri, venue **as**
43 **to that individual plaintiff** shall be determined as follows:

44 (1) If the defendant is a corporation, then venue shall be in ~~[any]~~ **the** county where a
45 defendant ~~[corporation's registered agent is located]~~ **has its principal place of residence** or, if
46 the plaintiff's principal place of residence was in the state of Missouri on the date the plaintiff
47 was first injured, then venue may be in the county of the plaintiff's principal place of residence
48 on the date the plaintiff was first injured;

49 (2) If the defendant is an individual, then venue shall be in ~~[any]~~ **the** county ~~[of]~~ **where**
50 the ~~[individual defendant's]~~ **defendant has its** principal place of residence in the state of
51 Missouri or, if the plaintiff's principal place of residence was in the state of Missouri on the date
52 the plaintiff was first injured, then venue **as to that individual plaintiff** may be in the county
53 containing the plaintiff's principal place of residence on the date the plaintiff was first injured;

54 (3) Notwithstanding subdivisions (1) and (2) of this subsection, if the plaintiff was first
55 injured in a foreign country in connection with any railroad operations therein and any defendant
56 is a:

57 (a) Corporation that, either directly or through its subsidiaries, wholly owns or operates
58 the foreign railroad; or

59 (b) Wholly owned subsidiary of a corporation that, either directly or through its
60 subsidiaries, wholly owns or operates the foreign railroad;

61

62 then venue shall exclusively be in the county where any such defendant corporation's registered
63 agent is located, regardless of venue as to any other defendant or, if the plaintiff's principal place
64 of residence was in the state of Missouri on the date the plaintiff was first injured, then venue
65 may be in the county of the plaintiff's principal place of residence on the date the plaintiff was
66 first injured.

67 6. Any action, in which any county shall be a plaintiff, may be commenced and
68 prosecuted to final judgment in the county in which the defendant or defendants reside, or in the
69 county suing and where the defendants, or one of them, may be found.

70 7. In all actions, process shall be issued by the court in which the action is filed and
71 process may be served in any county within the state.

72 8. In any action for defamation or for invasion of privacy, the plaintiff shall be
73 considered first injured in the county in which the defamation or invasion was first published.

74 9. In all actions, venue shall be determined as of the date the plaintiff was first injured.

75 10. All motions to dismiss or to transfer based upon a claim of improper venue shall be
76 deemed granted if not denied within ninety days of filing of the motion unless such time period
77 is waived in writing by all parties.

78 11. In a wrongful death action, the plaintiff shall be considered first injured where the
79 decedent was first injured by the wrongful acts or negligent conduct alleged in the action. In any
80 spouse's claim for loss of consortium, the plaintiff claiming consortium shall be considered first
81 injured where the other spouse was first injured by the wrongful acts or negligent conduct alleged
82 in the action.

83 12. The provisions of this section shall apply irrespective of whether the defendant is a
84 for-profit or a not-for-profit entity.

85 13. In any civil action, if all parties agree in writing to a change of venue, the court shall
86 transfer venue to the county within the state unanimously chosen by the parties. If any parties
87 are added to the cause of action after the date of said transfer who do not consent to said transfer
88 then the cause of action shall be transferred to such county in which venue is appropriate under
89 this section, based upon the amended pleadings.

90 14. A plaintiff is considered first injured where the trauma or exposure occurred rather
91 than where symptoms are first manifested.

92 **15. Notwithstanding any other provision of law to the contrary, in any civil action**
93 **in which there is any count alleging a tort, each plaintiff shall establish that the court**
94 **where the action is filed is a proper venue against each defendant, independent of the**
95 **claims brought by any other plaintiff or against any other defendant. Venue for each**
96 **plaintiff and each defendant cannot be established by joinder or intervention.**

97 **16. If the county where the plaintiff's claim is filed is not a proper venue, that**
98 **plaintiff shall be transferred to a county where proper venue can be established. If no such**
99 **county exists in the state of Missouri, the claim shall be dismissed without prejudice.**

100 **17. Denial of a motion to transfer venue under section 507.040, 507.050, or 508.010,**
101 **if denied in error, requires reversal, and no finding of prejudice under Missouri supreme**
102 **court rule 84.13(b) is required for reversal.**

103 **18. For the purposes of this section, the principal place of residence of a domestic**
104 **insurance company shall be the county where its registered office is maintained. The**
105 **principal place of residence of a foreign insurance company shall be in the county where**
106 **its registered office is maintained unless it does not maintain such an office within the state.**
107 **If a foreign insurance company does not maintain a registered office in any county in**
108 **Missouri, the principal place of residence of the foreign insurance company shall be in Cole**
109 **County.**

508.012. At any time prior to the commencement of a trial, if a plaintiff or defendant,
2 including a third-party plaintiff or defendant, is either added ~~[or]~~ **to**, removed, **or severed** from
3 a petition filed in any court in the state of Missouri which would have, if originally added ~~[or]~~
4 **to**, removed ~~[to]~~ , **or severed from** the initial petition, altered the determination of venue under
5 section 508.010, then the judge shall upon application of any party transfer the case to a proper
6 forum ~~[under section 476.410]~~.

537.762. 1. A defendant whose liability is based solely on his status as a seller in the
2 stream of commerce may be dismissed from a products liability claim as provided in this section.

3 2. This section shall apply to any products liability claim in which another defendant,
4 including the manufacturer, is properly before the court and from whom total recovery may be
5 had for plaintiff's claim.

6 3. A defendant may move for dismissal under this section within the time for filing an
7 answer or other responsive pleading unless permitted by the court at a later time for good cause
8 shown. The motion shall be accompanied by an affidavit which shall be made under oath and
9 shall state that the defendant is aware of no facts or circumstances upon which a verdict might
10 be reached against him, other than his status as a seller in the stream of commerce.

11 4. The parties shall have sixty days in which to conduct discovery on the issues raised
12 in the motion and affidavit. The court for good cause shown, may extend the time for discovery,
13 and may enter a protective order pursuant to the rules of civil procedure regarding the scope of
14 discovery on other issues.

15 5. Any party may move for a hearing on a motion to dismiss under this section. If the
16 requirements of subsections 2 and 3 of this section are met, and no party comes forward at such
17 a hearing with evidence of facts which would render the defendant seeking dismissal under this
18 section liable on some basis other than his status as a seller in the stream of commerce, the court
19 shall dismiss without prejudice the claim as to that defendant.

20 6. ~~[No order of dismissal under this section shall operate to divest a court of venue or~~
21 ~~jurisdiction otherwise proper at the time the action was commenced. A defendant dismissed~~
22 ~~pursuant to this section shall be considered to remain a party to such action only for such~~
23 ~~purposes.~~

24 ~~———7.]~~ An order of dismissal under this section shall be interlocutory until final disposition
25 of plaintiff's claim by settlement or judgment and may be set aside for good cause shown at
26 anytime prior to such disposition.

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